

ARTICLE 9

SECTION 2

OWNERSHIP AND AVAILABILITY

1. GENERAL

This section provides clarification of ownership and availability of property. It also defines property held in trust, reviews ownership and availability determination and explains some of the affects of transfers of property held in trust on Medi-Cal eligibility.

2. OWNERSHIP

In general, the owners of property are the persons who hold legal title to the property. Exceptions are the following:

MEM 50404

A. Community/Separate Real Property

1) Joint Tenancy

When title to real property is held together with one or more persons, (joint tenancy), each tenant's interest in the property is his/her separate property.

MEM 50072
50075

2) Tenants in Common

When title to real property is held as tenants in common, the property may be community, or separate.

3) Held with Non-Family Members (Not in the MFBU)

The worker must determine what portion of the property in which the applicant/beneficiary has legal interest.

MEM 50453

B. Contracts of Sale

1) Signed Contract

Property being purchased by the applicant/beneficiary under a signed contract of sale is considered owned by the applicant/beneficiary.

MEM 50453

Property being sold by the applicant/beneficiary under a signed contract of sale is not to be considered owned by the applicant/beneficiary. However, the principal portion of payments received under the contract of sale is considered property owned by the applicant/beneficiary and the interest is considered unearned income in the month received as identified in MPG Article 10, Section 2.

2) Verbal or Unsigned Contract

Property being purchased or sold under a verbal or unsigned contract of sale is considered the property of the seller until the sale is final.

C. Bank Accounts

1) Held with Family Members

The entire amount in accounts held jointly with family members is considered owned by the applicant/beneficiary. Family members are the following persons living in the home:

MEM 50041
50453

- a) A child or sibling children according to MPG Article 1, Section 1; and
- b) Parents (married or unmarried) of sibling children; and
- c) Separate children of either parent or of the stepparent; and
- d) Spouse.

2) Held with Non-Family Members

Accounts held jointly with non-family members are generally considered to be owned by the applicant/beneficiary if the applicant/beneficiary has unrestricted access to the account, that is, the applicant/beneficiary can withdraw with his/her signature alone. The exception is when the applicant/beneficiary presents evidence which clearly establishes that all or a portion of the funds in the account belong to the non-family members. If so, only that portion of the funds which belong to the applicant/beneficiary and/or family members considered owned by the applicant/beneficiary. In this instance it is assumed that a proportion equal to the number of owners belongs to each owner (e.g., four owners, each is presumed to own one-fourth of the property) unless evidence establishes otherwise.

DHS
Clarification

3) Single Name Account

Accounts held solely in the name of the applicant/beneficiary are considered owned by the applicant/beneficiary. If the account is held solely in the name of the applicant/beneficiary's spouse, and the account is considered community property according to MPG Article 9, Section 3, each spouse is considered to own one-half of the account.

MEM 50072
50076
50453

4) Examples

- a) The applicant and her adult daughter hold a joint account. Either of them can withdraw funds with his/her signature alone. The entire amount is considered owned by the applicant/beneficiary unless he/she provides evidence that clearly establishes that some or all of the funds in the account belong to the adult daughter. A written statement from the daughter which indicates that a portion of the funds in the account were deposited by her and are from her

own earnings or property, and intended for her own use, would be acceptable evidence that the daughter owns part of the account. The rest would be considered owned by the applicant/beneficiary.

- b) An adult son asks his mother to hold \$5000 for him in her account. The adult son's name is not on the account. The money belongs to the mother.
- c) An adult son gives his father \$2000 to purchase a car for the father. The money is deposited in the father's account. The car is not purchased and the money is returned to the son. The son's name is not on the account. Although the \$2000 is income in the month received, if any or all of the money remains in the account beyond the month of receipt, it becomes property owned by the father.

D. Leased Property

An applicant/beneficiary has no ownership interest in leased property, unless otherwise stated in the lease agreement. An option to purchase at the conclusion of the termination of the lease is not considered an ownership interest.

E. Life Insurance Policies

In general, the individual who contracted for the policy is the owner of the policy. The owner may or may not be the insured person or the beneficiary. If ownership is questionable, the policy should be viewed for clarification.

3. AVAILABILITY

Only property which is available to the applicant/beneficiary is to be considered in the eligibility determination. Some property owned by the applicant/beneficiary may be considered unavailable, and therefore exempt for either a temporary or indefinite period of time. Each section in the property article identifies the conditions the property must meet during this exempt period. Once the conditions are no longer met, the property loses its exempt status.

A. Applicant/Beneficiary is Incompetent

Property is considered unavailable if the applicant/beneficiary is mentally incompetent, there is no spouse or conservator of the estate, and the person acting on the applicant/beneficiary's behalf (key person) does not have the right, power, and authority to access the property. Appropriate action must be taken immediately to make the property available. If there is no relative or friend willing and able to seek conservatorship, the worker must make a referral to the Public Guardian's Office per MPG Article 9, Section 4. The property remains unavailable pending appointment of a conservator of the estate, guardian, or other change in circumstances which would enable the owner, or someone acting on his/her behalf, to access the property.

B. Accumulated SSI Overpayments

ACWDL
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Funds resulting from SSI overpayments and held in a bank account, or as uncashed check(s) are considered unavailable property. The applicant is not eligible to receive this money, and has no authority to spend it. This must be verified by a SSA notice discontinuing SSI eligibility, or by verification that SSA has been notified the applicant is now residing in a skilled nursing or intermediate care facility.

The amount of the SSI overpayment can be determined by:

- 1) Multiplying the monthly SSI award by the number of months since the date of discontinuance stated on the SSI discontinuance notice, or;
- 2) Multiplying the monthly award by the number of months that a long term care person has been institutionalized.

C. Property Considered To Be Unavailable

- 1) Property will be considered unavailable if there is a good faith intent to liquidate the property. A good faith intent is demonstrated when the person holds the property for sale by taking all necessary steps. If the applicant discontinues her good faith intent to liquidate the property, the property will be considered available.
- 2) Other real property will be considered unavailable beginning the first day of the month in which a good faith intent to sell is started.
 - a) Necessary steps include: Listing the property for sale with a licensed real estate broker for its fair market value, advertising the property for sale in the local community, and supplying copies of all offers.

The client will supply verification to the County Department every six months.

- 3) There are several situations that may cause the cash surrender value of pension funds and annuities to be considered unavailable:
 - a) The applicant/beneficiary is receiving (from each fund) periodic payments of interest and principal.
 - b) The applicant/beneficiary, who is 70 and one half years of age or older, is receiving minimum mandatory distributions from his or her total fund.
 - (1) With the exception of the new Roth IRA's, an individual who has reached 70 and one half years of age must begin to withdraw the minimum mandatory distribution from his/her IRA/Keogh, and he/she must comply with federal law regarding those withdrawals.
 - (2) Once a person reaches 70 and one half years of age, any payment

received from a fund meets the requirements and renders the balance of that retirement fund unavailable.

- (3) Verification of principal/interest combination is not required after the individual reaches 70 and one half years of age.

- c) The applicant/beneficiary has requested release of the funds either in the form of payments or a lump sum. The balance of the fund is considered unavailable from the first of the month that a request for release of funds is made, until the funds are received. The balance of the funds in the account(s) will be considered unavailable even if payment has not yet been received as long as the applicant/beneficiary continues to make a good faith effort to receive payment(s) and continues to provide verification of those efforts.

- (1) One example of good faith effort:

Applicant/beneficiary sends a letter to the employer/fund holder in order to request release of the funds or to request payments from the fund. Thirty days pass with no response to the request and the applicant/beneficiary submits another written request.

- (2) Acceptable verification can include:

- Copies of correspondence with the employer or fund holder regarding the applicant/beneficiary's request for release of the funds.
- Documentation that the applicant/beneficiary is taking all necessary steps in a timely manner to obtain payment(s) from the fund.
- Narrative documenting contact with the employer/fund holder by the ET (a release of information is required from the applicant/beneficiary).

- d) Once periodic payments are received, they will be considered income. If a cash lump sum is received, it will be considered converted property and must be counted in the property reserve. Once funds have been verified as unavailable, retain verification of unavailability as a permanent document in the case file. No further action is needed until the applicant/beneficiary reaches age 55 or terminates employment at which time these funds may become available for early withdrawal. The applicant/beneficiary must be asked to request access to the funds. As a result of asking for release of these funds, the following situations may occur and should be treated as stated below.

- (1) If the applicant/beneficiary does not provide verification of the request for release of the funds, they will be counted as property.

- (2) If the applicant/beneficiary has provided verification of requesting release of the funds, but the funds have not been received, follow the steps in c), above.
 - (3) If the fund holder denies access to the funds, verification of the denial must be provided. The reason for the denial will be listed on the letter. The funds will be considered unavailable until the circumstances that caused the denial have changed. The ET will then recheck the status of the funds at that time.
 - (4) Payment is received. See e) below.
 - e) Once periodic payments from each fund, systematic withdrawals from each fund, or minimum mandatory distributions from their total retirement funds are established, the total balance of all the individual's IRA's/Keogh's/work-related pension funds are then considered unavailable.
 - f) The funds are jointly held with a third party and/or an employer and that party refuses to grant access to the funds. (See Article 9, Sec. 6)
 - g) If evidence clearly establishes that property held in the name of an applicant/beneficiary belongs to a person who is not in the MFBU, the property will be considered to be unavailable to the applicant/beneficiary. This includes property that is shared with another person.
- Evidence may include:
- (1) A postmarked letter from the non-MFBU member discussing the property in question and providing instructions as to its use.
 - (2) Copies of pay stubs belonging to the non-MFBU member and corresponding deposits into the account of the client.
 - (3) Corresponding deposits and withdrawals from the non-MFBU member's accounts to the account belonging to the client.
 - (4) Evidence cannot only be a statement from the client.
- h) The individual must terminate employment to access the funds.
- 4) If the applicant/beneficiary elects to defer payments from any or all of these funds, then the cash surrender value shall be considered available and should be included in the property reserve.